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October 1, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S. W. – Room TWB-204
Washington, D. C. 20554

Re: *Ex parte,* CC Docket No. 96-149, Verizon Petition for Forbearance from the Prohibition of sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules

Dear Ms. Dortch:

Attached please find AT&T's response to Verizon's August 11, 2003 written ex parte submission in the above-captioned proceeding.

Consistent with Section 1.1206 of the Commission's rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-captioned proceeding.

Sincerely,

ATTACHMENT

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October 1, 2003

VIA E-MAIL

Marlene Dortch
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Federal Communications Commission
445 12th Street, S.W., TW-A-325
Washington, DC 20554

Re: *Verizon Petition for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules*, CC Docket No. 96-149

Dear Ms. Dortch:

AT&T Corp. ("AT&T"), hereby responds to Verizon's August 11, 2003 *ex parte*. That *ex parte* still does not cure the failure of Verizon to produce any credible evidence that the OI&M safeguard, found by the Commission to be "necessary" to prevent "unjust[] and unreasonably discriminatory" practices by Verizon,[1] has imposed any costs on Verizon.[2] That the OI&M safeguard in no way hinders Verizon is reflected by the realities

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1 *See Non-Accounting Safeguards Order* ¶ 163 ("[a]llowing a BOC to contract with the section 272 affiliate for operating, installation and maintenance services would inevitably afford the affiliate access to the BOC's facilities that is superior to that granted to the affiliate's competitors"); *Non-Accounting Safeguards Second Order On Reconsideration* ¶ 12; *Non-Accounting Safeguards Third Order On Reconsideration* ¶ 20.

2 For the reasons set forth in AT&T's July 9, 2003 *ex parte* responding to Verizon's June 4, June 17, and June 24, 2003, *ex parte* filings ("AT&T's July 9, 2003 substantive *ex parte*") at 3, no matter how costly compliance with the OI&M safeguards is claimed to be, so long as there is a "strong connection" between those safeguards and the protection of long distance competition, they are "necessary" within the meaning of Section 10 and forbearance may not be granted. As further demonstrated by AT&T in a separate *ex parte* filed the same day, the Commission

of the marketplace. Despite the alleged "costs" of the Section 272 safeguards, Verizon, in the *two years* following its entry to New York, has had no problem achieving a 34 percent market share in that state. Verizon has captured more market share in 24 months than all AT&T's interexchange competitors combined were able to realize ten years after implementation of equal access in 1985.[3] There is simply no basis in the record for forbearing from the OI&M safeguard that will, in any event, expire as soon as Section 272 sunsets in each of the BOC's states.[4]

AT&T would further note that the Commission, in finding the BOCs non-dominant in the *LEC Classification Order*,[5] did so because the BOCs' affiliates were required by section 272 to be "structurally separate" from the BOCs and to "operate independently" from the BOCs.[6] At the time the *LEC Classification Order* was issued, the "operate independently" requirement had been construed by the Commission to include the OI&M restriction. Should the Commission now forbear the OI&M requirement, the non-dominance determination would no longer be valid.

1. *GNI's Cost Savings Claims Remain Unsubstantiated*

As demonstrated by AT&T's prior *ex parte* filings, Verizon has utterly failed to substantiate its *ipse dixit* cost savings claim.[7] The Supplemental Declaration of Fred Howard ("Howard Supplemental Declaration") appended to Verizon's August 11, 2003 *ex parte* does not cure this failure to substantiate Verizon's claims.

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cannot in any event forbear under Section 10(d) from applying section 272(b)(1)'s "operate independently" requirement including the operation, installation, and maintenance ("OI&M") safeguard.

3 Further Notice of Proposed Rulemaking proceeding in FCC WC Docket No. 02-112 and CC Docket No. 00-175, FCC 03-111 FCC 03-111 (rel. May 19, 2003) ("*Non-Dominance FNPRM*"), Reply Declaration of Lee L. Selwyn appended to AT&T's Comments (July 28, 2003) ¶¶ 8, 53 and 67.

4 Indeed, Verizon's submission of a cost analysis that goes through 2006, even though the bulk of Verizon territory will be free of the OI&M safeguard in 2004 and 2005, materially and artificially inflates Verizon's costs by not taking into account the impact of these Section 272 sunsets. More specifically, assuming that the Commission will, as occurred in New York and Texas, *see,* Public Notice, *Section 272 Sunsets for Verizon in New York State by Operation of Law on December 23, 2002 Pursuant to Section 271(f)(1)*, WC Docket No. 02-112, 17 FCC Rcd. 26864 (2002); *Public Notice*, 18 FCC Rcd. 13566 (2003) ("*Texas Sunset Notice*"), allow section 272 to sunset without extension in the remaining Verizon states, section 272 will sunset in Massachusetts in April, 2004; in Pennsylvania in September, 2004; in New Jersey in March 2005; and in Virginia in October 2005.

5 Second Report and Order, *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area,* 12 FCC Rcd. 15756, ¶¶ 83, 158-61 (1997) ("*LEC Classification Order*"), unrelated provisions modified, Order on Reconsideration, *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area,* 12 FCC Rcd. 8730 (1997).

6 *Id.* ¶ 91, 112-18.

7 *See*, AT&T's July 9, 2003 substantive *ex parte* at 3-4.

In his Supplemental Declaration, Mr. Howard seeks to cure Verizon's defective evidentiary showing by now asserting that he has "first-hand knowledge" of the percentages and dollar amounts and the generalized description of assumptions contained in Verizon's May 12, 2003, June 4, 2003 and June 24, 2003 *ex partes*.[8] Even if Mr. Howard had "first hand knowledge" of the numbers and assumptions included in those *ex partes*, a general averment to that effect is no substitute for the underlying data, including financial reports, and related workpapers that *Verizon could and should have submitted* under the Protective Order. Thus, neither the Commission nor commenters could test and verify Verizon's numbers, calculations or assumptions, such as, for example, labor rates, capital costs, depreciation lives, and whether the costs in question are actually "driven" by section 272 and the prohibition on OI&M sharing, in particular.

Moreover, it is eminently clear from Mr. Howard's Supplemental Declaration that Mr. Howard in fact does not have "personal knowledge" of the underlying cost data. As Mr. Howard himself avers, in preparing all three *ex partes*, "Verizon asked the subject matter experts in each job function to estimate the costs that would have been incurred if they had been able to ask the BOCs to perform the OI&M services rather than to develop a separate workforce or hire outside contractors."[9] Thus, it is the "GNI subject matter experts representing Operations, Information Technology, Engineering, Business Services and Finance"[10] who are the persons with "personal knowledge" and affidavits should have been submitted by each of the subject matter experts consulted setting forth: (i) their background and area of expertise; (ii) what they looked at and relied upon; (iii) how the specific numerical values of the various percentages had been arrived at; (iv) what facts they relied upon, (v) what analyses they conducted, and (vi) what efforts they made to examine and verify the reasonableness of the "assumptions" that had been utilized.

In response to AT&T's concerns that Verizon's cost analysis was incomplete because it reflected only the costs avoided by GNI but not the additional costs incurred by the BOC, Mr. Howard's avers that "the Verizon petition was reviewed by BOC representatives"[11] but that GNI did not "include the BOC operational personnel in the development of the cost study."[12] But the expertise of the unidentified representatives (who were apparently other than operational personnel) is not provided. Nor does Mr. Howard's declaration disclose to what extent those representatives concurred that GNI's "avoided [GNI] cost" analysis correlated with the arms-length price that, as shown below,[13] the BOC must charge GNI under the affiliate transaction rules.

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8 Howard Supplemental Declaration, ¶ 2.

9 *Id.*, ¶ 3.

10 *Id.*, ¶ 4.

11 It appears they were given access to GNI's internal proprietary data in apparent disregard of the required structural separation between the two entities.

12 Howard Supplemental Declaration, ¶ 4.

13 Item 3 at page 5 below.

2. *GNI's Restatement of its "Absorption" Argument Into an "Economies of Scale and Scope" Argument is Similarly Unsubstantiated and Not Credible*

In its June 24, 2003 *ex parte*, Verizon stated that the incumbent LEC's "existing staff" and "existing" facilities would "absorb" all of GNI's OI&M work.[14] Verizon now contends that this "absorption" claim (resulting in almost 60% cost savings to GNI)[15] was not based on the assumption "that the BOC is working inefficiently and that it would provide OI&M services using workers that are currently idle" but rather that "[b]y purchasing services from the BOC, GNI could take advantage of the BOC's economies of scale and scope."[16]

Efficiency claims such as "economies of scale and scope" should be substantiated "so that the Agency can *verify by reasonable means* the *likelihood* and *magnitude* of each asserted efficiency."[17] Verizon's economies of scale savings claim [18] is supported only by its *ipse dixit* assertions of savings and general averments about the BOC's substantially larger workforce.[19] That is clearly insufficient where, as here, it could have been substantiated with the underlying historical data and related workpapers, and by affidavits from the specific subject matter experts.

The presence of multiple facilities-based long distance carriers confirms that the "minimum efficient scale" of operations – the point at which the long run average unit cost levels off – occurs at output levels that are a small fraction of total industry capacity. Thus, Verizon's general "size of operation" averment rings hollow in light of Verizon's claim that Verizon Long Distance ("Verizon LD") is the third largest provider of interexchange service in the United States, exceeding in size other long distance carriers that have themselves achieved "minimum efficient scale."[20] At that level of operations,

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14 *See*, Verizon's June 24, 2003 *ex parte* at 7, discussing both "Professional Services ("[GNI's] *work could be absorbed by the existing staff of local exchange carrier technicians*") and Back Office ("the *existing* local exchange carrier 611 centers ... *are sufficiently large to absorb the incremental work* [and t]he *existing* local exchange carrier Recent Change Administration Center, or RCMAC, is likewise able *and sufficiently large to absorb* the incremental manual provisioning of long distance orders") (emphasis supplied).

15 That is, Verizon claims that forbearance will allow it to save $183 million out of the $298 million (approximately 60%) it would have otherwise spent between 2003 and 2006. Verizon August 11, 2003 *ex parte* at 6.

16 Howard Supplemental Declaration ¶ 5; *see also*, Verizon August 11, 2003 *ex parte* at 2.

17 *See, e.g.*, Department of Justice and Federal Trade Commission, *Revision to the Horizontal Merger Guidelines* (April 8, 1997) ("*Efficiency Guidelines*") at 1 (emphasis added).

18 Verizon's bald assertion of "economies of scope" is never explained anywhere in Verizon's many filings in this proceeding.

19 Howard Supplemental Declaration ¶ 5 ("These economies are shown in the net reduction in GNI's projected budget with OI&M relief").

20 Verizon Press Release, "Verizon Now Third Largest Long-Distance Company, Passes Sprint with More than 10 Million Customers, Variety of Long Distance Plans Power

Verizon LD, and its network provider GNI, should be operating at or near minimum average cost, *i.e.*, should have been able to achieve most or all of the potential economies of scale or scope (*i.e.*, should have achieved "minimum efficient scale"), such that the magnitude of any *bona fide* additional economies of scale arising from integration of its operations with the Verizon BOCs would be minimal, perhaps even zero.

Moreover, the economies of scale claimed by GNI could be achieved without eliminating the OI&M safeguards. For example, Verizon could have contracted with any number of other "call center" service providers for back office operator services, and thereby avoided the cost of building the Altoona and Worcester operator service facilities that it claims was made necessary specifically because of the OI&M separation requirement. However, such a contract would have been a true arm's length transaction, and would therefore almost certainly represent an out of pocket cost to Verizon higher than the fully distributed cost Verizon intends to charge itself.[21]

3. GNI's Cost Savings Calculations are Based on an Artificial "Prevailing Company Price" Calculation that Will Not Practically Be Available to Unaffiliated IXCs

Verizon further asserts that the $115 million GNI would have to pay the BOC over the four year period[22] "reflected the incremental cost that the BOCs incur to provide OI&M services to a section 272 affiliate [that] will be charged to that affiliate on a fully distributed cost basis" consistent with the affiliate cost allocation rules.[23] Verizon's characterization of the FCC's affiliate transaction rules as being "based on fully distributed cost principles" underscores the concern about whether GNI will be paying an artificially low price to the Verizon BOC for OI&M services if Verizon's forbearance petition is granted. Section 272 affiliate transactions are supposed to be based upon "arm's length" principles requiring that the BOC ILEC realize the full market value of the service provided, not merely that it be reimbursed for its costs.

Verizon has evaded this requirement in the past by exploiting a "prevailing company price" loophole for affiliate transactions, ensuring that the BOC never receives full and fair market value for the services it provides. Verizon's use of the "prevailing company price" loophole is premised upon its representation that all services being furnished to a section 272 affiliate will be offered and available on a nondiscriminatory basis to nonaffiliated firms.

But Verizon's claims that it will provide OI&M services to unaffiliated entities on a nondiscriminatory basis are disingenuous, considering that Verizon regularly structures its affiliate transactions such that, as a practical matter, only the Verizon affiliate is capable of using the service or qualifying for the lowest price. For example, its Section 272(b)

Customized Service Packages," January 7, 2003. http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=78494&PROACTIVE_ID=cecec7c8c8cecccbcbc5cecfcfcfc5cececdc8c9cfcbcacacac5cf

21 Discussed more fully in the next section.

22 See n. 15 *supra*.

23 Verizon August 11, 2003 *ex parte* at 3; Howard Supplemental Declaration ¶ 5.

posting regarding billing and collection offers large discounts to "any" purchaser of these services that provides 85% of its *total* Verizon end user billing to Verizon for processing.[24] The only entity that would typically qualify for this discount is, of course, Verizon Long Distance.

4. *GNI's "Undertaking" to File Cost Allocation Manual Changes Will Neither Help Detect Nor Will It Deter the Misallocation of OI&M Costs*

Verizon asserts that there could be no misallocation of OI&M expenses because it "would file Cost Allocation Manual ('CAM') changes to capture these costs," using time reporting codes "*to be* created and *defined*" (Verizon June 24, 2003 *ex parte* at 4) and "new non-regulated cost pools as *necessary*."[25] Without knowing what cost pools Verizon will unilaterally deem "necessary" or what "definitions" GNI will use for the time reporting codes, Verizon's assurances are meaningless.[26] Nor would meaningful definitions and the inclusion of necessary cost pools cure the problem. The CAM data, even with the changes proposed by Verizon would not, for example, allow regulators to determine whether or how the BOC allocated joint OI&M costs. That is, for a joint local and long distance installation or repair service call, would GNI be charged only for the "incremental" long distance portion of the work so that it would not be charged for its allocable portion of the joint cost of sending the field force and vehicles to the job site?

ARMIS simply reports a regulated/non-regulated split, which does not lend itself to tracing back specific expenses. Later, after-the-fact audits are insufficient to detect or deter current misallocation. As the recent *Verizon NAL*[27] demonstrates, such after-the-fact audits are an ineffective means for policing -- let alone preventing -- violations of Section 272.[28] The *Verizon NAL* validates the Commission's concern, expressed herein, that the sharing of OI&M services would force it to engage in "excessive, costly and

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[24] *See*, http://www.verizonld.com/PDFs/am06bsarates08-04-03.pdf.

[25] Verizon August 11, 2003 *ex parte* at 3.

[26] In its Original Petition, Verizon stated that it would use existing time reporting codes and did not think there would be any necessary changes for monitoring cost allocations. Verizon's *Petition for Forbearance* (August 5, 2002) at 4.

[27] *In the Matter of Verizon Telephone Companies, Inc. Apparent Liability for Forfeiture*, File No. EB-03-IH-0245 (rel. Sept. 8, 2003).

[28] There the Commission found that the Section 272 biennial audit showed that "Verizon failed to record a total of 43 transactions [out of 70 sampled] according to the methods specified in section 32.27" so that "Verizon has apparently failed to justify its accounting entries for approximately $16 million in services provided to its section 272 affiliate;" *id*, ¶ 13 and imposed a fine of $283,000. *Id*, ¶ 17. For the Internet posting violations, "because we are barred by the one year statute of limitations" all the Commission could do was "admonish the company." *Id*, ¶ 13. Finally, although the audit guidelines required disaggregation of service for purposes of measuring performance, because Verizon unilaterally induced the auditor to adopt measurements that did not disaggregate the data (*see* AT&T Comments on the Biennial Audit at 16-22) "to a level sufficient to permit a service-by-service discrimination analysis" the Commission declined to find any violation. *Id*, ¶ 16, n.18.

burdensome" auditing and monitoring of "day-to-day activities" in order to ensure that the BOCs were not using OI&M as a tool for anticompetitive practices.[29]

5. *Verizon's Reliance on Price Cap Regulation As An Effective Deterrent to Cross-Subsidization Ignores the Realities of that Regulation*

Dr. Selwyn has fully described in this[30] and related proceedings,[31] how even if *CALLS* were "pure price caps," Verizon would still have a powerful incentive to shift costs *out* of its long distance affiliates so as to enhance their ability to compete with nonintegrated rivals. In any event, *CALLS* is not "pure price caps" as Verizon claims, because it is scheduled to expire in July 2005, and the Commission has expressly committed to reexamine ILEC price caps if, at the time that *CALLS* expires, the level of competition is still not sufficient to constrain rates effectively. Indeed, when the *CALLS* plan was adopted by the FCC, the Commission specifically expressed the *expectation* that by 2005:

> "increased competition will serve to constrain access rates in the later years of the CALLS Proposal as X-factor reductions are phased out. We believe that market forces, instead of regulatory prescription, should be used to constrain prices whenever possible. As competitors utilizing a range of technologies, including cable, cellular, MMDS and LMDS, continue to enter the local exchange market, we expect that rates will continue to decrease.... Therefore, the significant up-front reductions coupled with increased competition ultimately should result in access charges that are comparable to those that would be achieved under our current price cap system over the five-year term of the CALLS Proposal. Furthermore, after the five year term we can re-examine the issue to determine whether competition has emerged to constrain rates effectively."[32]

That, of course, has not happened, and is unlikely to happen by 2005.

Although Verizon would like to relegate to mere "speculation" the issue of Commission review of price caps and of *CALLS*,[33] with the expiration of *CALLS* and an access market that is still far from being competitive, the Commission will necessarily have to consider the future of access charges and of price cap regulation generally. This affects Verizon's current incentives and conduct. If Verizon is able to load costs onto its ILECs, those costs (if not detected and eliminated) could then be used to support a higher

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29 *BOC Separation Order* ¶ 70.

30 *See*, Ex Parte Declaration of Lee L. Selwyn, appended to AT&T's Comments CC Docket No. 96-149 (November 15, 2002) ¶¶ 44-45.

31 *See*, Declaration of Lee L. Selwyn appended to AT&T's Comments in the *Non-Dominance FNPRM* (June 30, 2003) ¶¶ 97-103 ("Price Cap plans often allow upward; Reply Declaration of Lee L. Selwyn appended to AT&T's Comments in the *Non-Dominance FNPRM* (July 28, 2003) ¶¶ 57-58.

32 *Access Charge Reform*, CC Docket No. 96-262, *Sixth Report and Order*, CC Docket Nos. 96-262 and 94-1, *Report and Order*, CC Docket No. 99-249, *Eleventh Report and Order*, CC Docket No. 96-45, 15 FCC Rcd 12962, 13031 (2000).

33 Verizon August 11, 2003 *ex parte* at 3.

overall ILEC access charge rate level and a less onerous (from Verizon's perspective) price adjustment mechanism under a reexamination of CALLS and possible reinitialization of access charges at the 11.25% ILEC authorized rate of return.

6. *The Savings GNI Claims Will Be Realized on OSS Systems is Based on GNI's Discriminatory Access to the BOCs OSS Systems*

In the June 4 *ex parte*, Attachment 3 at 5, note 4, Verizon states that "[b]ecause OSS suites are already in place with considerable software and hardware capital investment, the incremental savings for OSS due to elimination of the section 272 restrictions in the future are relatively small, relating primarily to reductions in the need to purchase software and hardware updates in the future." In light of the purported need for forbearance to serve the most demanding large business customer,[34] one would assume that if GNI will not update its systems, GNI will use "the BOCs OSS [that] could perform the same tasks with little modification."[35]

After years of claiming that it was impractical for Verizon to grant others access to the BOC's OSS, Verizon apparently now intends to give GNI access to its BOC OSS if it is no longer subject to OI&M separation. This would then require that the Verizon BOCs afford direct access to their OSS to nonaffiliated CLECs and IXCs, something that they have long insisted cannot be done[36] – and they have not explained how it will be done if the forbearance petition is granted.

Verizon does not presently provide nonaffiliated CLECs and IXCs with direct access to its OSS. Instead, carriers are required to communicate with Verizon's OSS using a variety of manual and electronic order forms and other message formats, transmitted via specially designed interfaces between their systems and Verizon's. For example, rather than obtaining direct access to Verizon data bases to order services and to check the status of pending orders, nonaffiliated carriers are required to submit "requests" that are then responded to by Verizon's systems or by Verizon personnel. Before a carrier's "request" can be processed by Verizon, it must be checked for completeness by Verizon systems and/or personnel, and will frequently be returned unfulfilled to the requesting carrier if the

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[34] Declaration of Steven G. McCully appended to Verizon's *Petition for Forbearance*, *passim.*

[35] Verizon's *Petition for Forbearance* at 3.

[36] *See, e.g.,* Commonwealth Of Massachusetts Department Of Telecommunications And Energy, *Investigation by the Department on its own Motion Into the appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount For Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts,* D.T.E. 01-20 ("Massachusetts UNE rates case"), Direct Testimony of Louis D. Minion on behalf of Verizon Massachusetts on Costs And Rates For Access To OSS (May 4, 2001) at 4-5 and 14-15 (CLECs are not permitted to access Verizon's OSS directly, but instead must do so through "interfaces" or "gateway" systems specially developed by Verizon for this purpose; made clear that this differs from the manner in which Verizon's own personnel access its OSS).

required information is incomplete or incorrect. Under the existing OI&M separation requirements, GNI (and other section 272 affiliates) presumably communicate with Verizon's OSS in exactly this manner, like any nonaffiliated carrier.

However, if the OI&M restriction is lifted, GNI would then be afforded direct access to Verizon's OSS, bypassing these various interfaces and messaging requirements, and avoiding the various delays and opportunities for error created thereby. Of course, affording GNI such direct access to the Verizon BOCs' OSS would require that Verizon offer similar direct access to other carriers *via* section 272(b)(5) postings. Verizon has offered no details as to how such direct access to its BOCs' OSS would be practically and economically provided to nonaffiliated carriers, nor has it explained why it could not have made such direct access available all along, rather than subjecting its competitors to what now appears to have been deliberately degraded interface arrangements. Indeed if, as Verizon now apparently claims, it would be able to afford nonaffiliated carriers the same direct access to its BOC OSS that GNI would enjoy if the OI&M restriction is lifted, then it needs to explain why it could not do exactly the same thing without being relieved of the OI&M separation requirement, since the nonaffiliated carriers to whom direct access would be provided would obviously not be integrating their own OI&M activities with Verizon's.

7. Verizon's Reliance on Computer III is Misplaced

Verizon criticizes as "revisionist history" AT&T's discussion of the *BOC Separations Order*,[37] although this decision was expressly cited by the Commission in the *Non-Accounting Safeguards Order*,[38] and cites as the relevant precedent the Commission's *Computer III* decision.[39] It is Verizon that is engaged in "revisionist history" "neglect[ing] to mention" that the Ninth Circuit rejected the cost-benefit analysis applied by the Commission in the *Computer III* proceedings to eliminate, *inter alia*, the OI&M restriction.[40] Despite over eight years since the court of appeals' last remand, the

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37 *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies*, CC Docket 83-115, Report and Order, 95 FCC 2d 1117, 1144 (1984), *aff'd sub nom. Illinois Bell Telephone Company v. FCC*, 740 F.2d 465 (7th Cir. 1984), *aff'd on reconsideration*, FCC 84-252, 49 Fed Reg. 26056 (1984), *aff'd sub nom. North American Telecommunications Association v. FCC*, 772 F. 2d 1282 (7th Cir. 1985).

38 *Non-Accounting Safeguards Order*, at 21984 ¶ 163 and fn. 389 ("We conclude, as we did in the BOC Separations Order, that allowing the sharing of [OI&M] services would require 'excessive, costly and burdensome regulatory involvement in the operation, plans and day- to-day activities of the carrier ... to audit and monitor the accounting plans necessary for such sharing to take place'").

39 Verizon August 11, 2003 *ex parte* at 5.

40 *See, e.g., California* v. *FCC*, 39 F.3d 919, 930 (9th Cir. 1994); *see also California* v. *FCC*, 905 F.2d 1217 (9th Cir. 1990); *California* v. *FCC*, 4 F.3d 1505 (9th Cir. 1993).

Commission has yet to issue an order that justifies the view that the BOCs rely on here.

Sincerely,

Aryeh Friedman

cc: W. Maher
J. Carlisle
M. Carey
W. Dever
P. Megna
C. Shewman
R. Tanner